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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,386	12/27/2000	John S. Sadowsky	42390P9858	6353
8791	7590	11/29/2005	EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN 12400 WILSHIRE BOULEVARD SEVENTH FLOOR LOS ANGELES, CA 90025-1030			PATHAK, SUDHANSHU C	
			ART UNIT	PAPER NUMBER
			2634	

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/750,386

Applicant(s)

SADOWSKY, JOHN S.

Examiner

Sudhanshu C. Pathak

Art Unit

2634

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED November 8<sup>th</sup>, 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-27.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Attached "Response to Arguments".  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.



**SHUWANG LIU  
PRIMARY EXAMINER**

***Response to Arguments***

1. Applicant's arguments filed November 8<sup>th</sup>, 2005 have been fully considered but they are not persuasive.

In regards to the arguments presented regarding the objection to the drawings, the objection is maintained (See "Response to Arguments" in Action dated August 8<sup>th</sup>, 2005 (Final Rejection)).

In regards to the arguments presented regarding the objection to the specification, the objection has been withdrawn.

In regards to the arguments presented regarding the 112 1<sup>st</sup>, Paragraph rejection, the rejection has been withdrawn. However, the examiner notes that in the amendment (Page 3, Claim Rejections, 35 U.S.C. 112, Paragraph 3, lines 1-5), discloses "Notwithstanding, .....if the output of A/D converter 75 is a single bit.....where each symbol represents a single bit with a 180° transition between every bit.". This is true only if the data stream were to consist of alternating ones and zeros.

In regards to the arguments presented regarding the 102(b) rejection, the rejection has been maintained. In regards to the arguments presented regarding the 102(b) rejection that the Pellon (5,392,042) does not disclose the limitation "wherein the portable communication device is adapted to subtract the feedback signal from an IF signal". This limitation is disclosed in the Pellon reference in (Abstract, lines 1-18 & Fig. 2a, element 204, 202 & Column 1, lines 35-50 & Column 2, lines 51-68 & Column 3, lines 3-5 & Column 4, lines 7-21 & Column 5, lines 63-68 & Column 11,

lines 11-20 & Column 12, lines 12-29 & Fig. 10, elements 1024, 1026, 700 & Fig. 7a & Column 20, lines 20-60). Furthermore, Fig. 10 discloses implementing a sigma-delta analog-to-digital converter implemented for converting an analog IF signal into a digital IF signal (in the intermediate domain) and therefore, the sigma delta analog-to-digital converter as described in Fig. 2 can be implemented in the system as described in Fig. 10. Therefore, the disclosure of the prior art is not taken out of context and thus Pellon does anticipate the claims.

In regards to the arguments presented regarding the 103(a) rejection, the rejection has been maintained. In regards to the arguments presented regarding the 103(a) rejection that the applicant is unaware of any reason, the skilled artisan would replace the switches disclosed with a modulator. Sklar discloses that an ASK modulator which functions as an On-Off keying modulator (Page 129, Fig. 3.5 ©). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention that Sklar teaches implementing an ASK modulator as a switching device and this is analogous to the switching device as described in Pellon, thus satisfying the limitation of the claim. Furthermore, the Sklar reference is only used to indicate to the applicant that it is commonly known (obvious) that an ASK modulator can be implemented as a switching device.

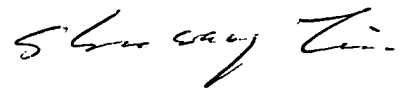
### ***Conclusion***

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sudhanshu C. Pathak whose telephone number is (571)-272-3038. The examiner can normally be reached on M-F: 9am-6pm.

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- If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Chin can be reached on (571)-272-3056
- The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.
- Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sudhanshu C. Pathak  
November 21<sup>st</sup>, 2005



**SHUWANG LIU**  
**PRIMARY EXAMINER**